

**Minutes of
S.C. Board of Health and Environmental Control
Meeting**

April 14, 2005

The S.C. Board of Health and Environmental Control met on Thursday, April 14, 2005, at 10:00 a.m. in the S.C. Department of Health and Environmental Control Board Room, 2600 Bull Street, Columbia, S.C. (Attachment 0-1)

The following members were in attendance:

Elizabeth M. Hagood, Chairman
Member-at-large

Edwin H. Cooper, III, Vice-Chairman
Charleston, 1st District

Carl L. Brazell
Columbia, 2nd District

Steven G. Kisner
Aiken, 3rd District

Paul C. Aughtry, III
Greenville, 4th District

Coleman F. Buckhouse, MD
Florence, 6th District

Also in attendance were Commissioner Earl Hunter and guests. (Attachment 0-2)

Chairman Hagood stated notice of this meeting has been provided to all persons, organizations and news media, which have requested notification, as required by section 30-4-80(e) of the South Carolina Code of Laws.

Item 1: Consideration of March 10, 2005, meeting minutes - For Approval (Attachment 1-1)

Mr. Brazell moved, seconded by Mr. Aughtry, to approve the minutes of the March 10, 2005, meeting. Approved

Item 2: Monthly Award for Excellence – April 2005 (Attachment 2-1)

The following were recognized by Commissioner Hunter:

Commissioner's Office – Karla Mew;

Environmental Quality Control – The Graniteville Train Wreck/Chlorine Leak Team (Rick Caldwell, Jennifer Hughes, James Burckhalter, Jim Brownlow, Lewis Rourk, Jeff Joyner, Dean Ray, Kurt Zollinger, Jason McRee, Jason Shirley, Greg Grunzel, Kim Newell, Erick Owens, Chris Steadman, Bob Adams, John Simpkins, Bill Krecker, Tom Rolka, Reed Corley, Leigh Beatty, Ben Buchanan, Travis Fuss, Ted Millings, Mary Hyman, JoAnn Glass, Kelly Knight, Tabatha Corley, Valarie Rhodes, Chris Staton, Robert Duncan, Michael Spradlin, Justin Hughes, Tom Chmura, Steve Burdick, Ron Kinney, Tom McKinney, Mike Moore, Patrick Green, Bubba Carnes, Buck Corley, Kevin Godwin, Daren Braswell, David Wilkie, Angie Jones, David Reed, Sandra Threatt, John Jessie, Church Arnold, David Solley, Barbara Lee, Roger Stevens, Bob Jackson, Leland McCormack, Dee Detwiler, Mark Harvley, Kenta Stokes, Brian Kemp, Bob Hudson, Ann Clark, Sarah Daniels, Uwe Klauck, Tracey Wilkes, David Payne, Matt Toms, Reggie Watts, Jack Pettit, Ronnie Driggers, Keith Collingsworth, Gerald Shealy, Nancy Whittle, Karen Sprayberry, Thom Berry, Jim Beasley, Stewart Carter, Clair Boatwright, Josh Arrants, Gregg O'Quinn, Doug Calvert;

Health Services – Leigh Bragg;

Appalachia I Health District – The Spot (Teen Clinic) staff (Judy Lilly, Shenicka McCray, Catherine Jones, Janet Marchant, Susan Curtis, Bennie Busby, Pam Nuckols, Julie Beard, Brenda Jordan, Cynthia Fuller, Margaret Therrell, Billie Vassar, Dana Gurley, Jackie Fowler, Linda Markovich, Diane McCloskey, Nancy Thomas, Melissa Simpson, Cindy Wilson, Lynn Olsen, Keninseb Garcia, Polly Edwards, Kristin Higgins, Tiffany James, Harmony Edelman, Rachel Caslin, Tiffany Watkins;

Appalachia III Health District – Billy Small;

Catawba Health District – Kathy Brewer;

Low Country Health District – Claudia Cartier;

Palmetto Health District – Fairfield County Health Department Employees (Linda Daniels, Pam Dennis, Betty Doeden, Angie Glisson, Judy Gwin, Pattie Harris, Patricia Klaus, Regina Miller, Karen Roseberry, Heather Shaw, Leticia Velez, Maurice Zeide;

Trident Health District – Julie Smith;

Upper Savannah Health District – Vicky Padgett;

Waccamaw Health District – Brenda Beaty.

Item 3: Public Hearing and Request for Final Approval – Proposed Amendment of Regulation 61-63, Radioactive Material (Title A), State Register Document No. 2963, Exempt from Legislative Review (Attachment 3-1)

Mr. Pearce O'Kelley, Bureau of Radiological Health, presented this item to the Board. The Nuclear Regulatory Commission continually updates regulations, and state regulations are amended regularly to incorporate federal updates. Section 274 of the Atomic Energy Act of 1954, as amended, and the Agreement between the U.S. Nuclear Regulatory Commission and the State of South Carolina, require that we adopt federal regulations for compatibility. Pursuant to

statutory authority provided in S.C. Code Section 13-7-10 et seq., the Department is requesting approval to amend Regulation 61-63, Radioactive Material (Title A). Proposed revisions are required to maintain compatibility with regulations promulgated by the U.S. Nuclear Regulatory Commission in Title 10, Code of Federal Regulations. The intended action revises the skin dose limit (Part III), and amends the regulations regarding the medical use of radioactive materials (Parts II, III and IV). Proposed regulations will comply with 10 CFR Parts 20, 32 and 35, Final Rules, published in the Federal Register on April 5, 2002, and April 24, 2002 (Volume 67).

A public hearing was conducted. (Attachment 3-2)

Mr. Cooper moved, seconded by Dr. Buckhouse, to find for the need and reasonableness of the proposed regulation and approve it for publication as final in the State Register. Approved

A verbatim transcript of these proceedings is included as part of the permanent record. (Attachment 3-3)

Item 4: CONTESTED CASE – Responsible Economic Development, et al. vs. South Carolina Department of Health and Environmental Control and Wal-Mart Stores East, LP, Docket No. 03-ALJ-07-0414-CC (Attachment 4-1)

Mr. Carlisle Roberts, Esq., introduced the case to the Board. Mr. Robert Guild, Esq., represented Responsible Economic Development, et al. Mr. James Myrick, Esq., represented Wal-Mart. Ms. Etta Williams, Esq., represented the Department.

Mr. Brazell moved, seconded by Mr. Aughtry, to go into Executive Session for the purpose of receiving Legal Advice. Approved

While in Executive Session, no actions were taken.

Mr. Cooper moved, seconded by Mr. Kisner, to affirm the Decision of the Administrative Law Court, as it contains no error of law and is supported by substantial evidence in the record. Approved by unanimous vote.

A verbatim transcript of these proceedings is included as part of the permanent record. (Attachment 4-3)

Item 5: Proposed Amendments to Regulation 61-62, Air Pollution Control Regulations and Standards, and the South Carolina State Implementation Plan, Exempt from Legislative Review – For Approval (Attachment 5-1)

Ms. Heather Preston, Bureau of Air Quality, presented this item to the Board. The Department proposes to amend Regulation 61-62, Air Pollution Control Regulations and Standards, and the South Carolina State Implementation Plan to make corrections and clarifications and to incorporate new Federal requirements into the existing regulations. The proposed amendments are necessary to maintain consistency with Federal rules and will not require legislative review.

Mr. Brazell moved, seconded by Mr. Aughtry, to grant initial approval to publish a Notice of Proposed Regulation in the State Register to provide opportunity for public comment, to hold a staff conducted informational forum, to receive and consider comments, and allow staff to proceed with a public hearing before the Board. Approved.

Item 6: Consideration for Regulation Revision Withdrawal – Proposed Revision of Regulation 61-3, The Practice of Selling and Fitting Hearing Aids, State Register Document No. 2927, Legislative Review is Required – For Decision (Attachment 6-1)

Mr. Dennis Gibbs, Bureau of Health Facilities, presented this item to the Board. A Public Hearing was held before the Board on January 13, 2005. The Board approved the proposed revision at this January 13, 2005, Public Hearing. Due to information submitted from the public, the Board directed that staff consider certain comments received during the January 13th Hearing. Namely, staff was tasked by the Board to research the provisions for training in the areas of tympanometry and cerumen removal, thereby possibly enabling hearing specialists to perform such procedures - activities that the proposed draft would not allow as currently written. Health Regulation staff met with interested members of the hearing aid industry on January 17, 2005, concerning issues and differences with the proposed regulation revision. The Department notified the SC Hearing Aid Commission via letter dated January 18, 2005, confirming the Board's request for research regarding training in tympanometry and cerumen removal, and requested input from the Commission in determining appropriate training for hearing aid specialists in these two areas. The regulation was filed with the S.C. Legislative Council on January 19, 2005, and was received by the General Assembly on January 20, 2005. The SC Senate referred the proposed regulation to the Medical Affairs (MA) Committee on January 25, 2005. The SC House of Representatives referred the proposed regulation to the Medical, Military and Municipal Affairs (3M) Committee on January 25, 2005. On March 1, 2005, the 3M Sub-Committee VI met to discuss the proposed regulation. The Department and the hearing aid industry identified issues and provided points for and/or against the proposed regulation revision. The Sub-Committee recommended that the Department and the hearing aid industry meet to discuss those issues of contention in the text of the proposed regulation. In agreement with the Sub-Committee's request, the Department's Health Regulation staff met with interested members of the hearing aid industry on the morning of March 8, 2005, concerning their position with the industries recommended changes to the proposed regulation. The Sub-Committee met again in the afternoon of March 8, 2005, and heard from the Department and the hearing aid industry regarding their agreements and disagreements in the proposed regulation. The Sub-Committee decided to recommend to the full 3M Committee that the proposed regulation be withdrawn by the Department and to incorporate specific changes in the text of the regulation.

A copy of the April 5, 2005, letter from the House 3M Committee requesting the withdrawal of R.2927 was sent to the Board via facsimile on April 12, 2005. Copies of comments that were received by the Department were also included. (Attachment 6-2)

Mr. Aughtry moved, seconded by Mr. Brazell, to accept the recommendations of the House 3M Committee, and withdraw the regulation, make requested changes and resubmit to the Legislature. Approved

Item 7: Administrative Orders, Consent Orders and Sanction Letters issued by Health Regulation (February 1, 2005 through February 28, 2005) – For Information (Attachment 7-1)

Mr. Gibbs stated four (4) actions had been taken with penalties of \$7,400.

The Board accepted this item as information.

Item 8: Administrative and Consent Orders issued by Environmental Quality Control (February 1, 2005 through February 28, 2005) – For Information (Attachment 8-1)

Ms. Claire Prince, Director, Enforcement and Compliance Assistance, Environmental Quality Control, stated seventeen (17) orders had been issued with penalties of \$75,311.75.

The Board accepted this item as information.

Item 9: Orders issued by Ocean and Coastal Resource Management (February 1, 2005 through February 28, 2005) – For Information (Attachment 9-1)

Mr. Steve Snyder, Acting Deputy Commissioner of Ocean and Coastal Resource Management, stated five (5) orders had been issued with penalties totaling \$8,750.

The Board accepted this item as information.

Item 10: Regulation 30-12(N), Access to Small Islands -

Mr. Roberts presented this item to the Board. The item arises from a Supreme Court Decision on the Land Tech case. The Court struck down the Department's Regulation 30-12 (N), Access to Small Islands, because it did not contain a definition of "small island." The Department filed a Motion for Reconsideration of this issue and it was denied this week. The Department has started the promulgation process to amend the regulation.

Mr. Cooper moved, seconded by Mr. Kisner, to go into Executive Session for the purpose of receiving legal advice. Approved.

While in Executive Session, no actions were taken.

Dr. Buckhouse moved, seconded by Mr. Aughtry, to approve the attached Board Resolution. (Attachment 10-1) Approved.

Item 9: Agency Affairs

Commissioner Hunter reported the following:

Health S.C. Initiative;

Capital Health Initiative;
Budget;
Influenza Update;
Legislative Update.

Item 13: Legal Report – For Information

Mr. Carl Roberts updated the Board on legal issues.

Mr. Brazell moved, seconded by Mr. Aughtry, to adjourn. Approved

The meeting adjourned.

All referenced attachments are made a permanent part of these minutes.

Respectfully submitted,

L. Michael Blackmon
Secretary of the Board

Minutes approved this 9th day of June 2005.

ATTEST:

Elizabeth M. Hagood
Chairman

Attachments

- 0-1 Agenda
- 0-2 Sign-in Sheet
- 1-1 March 10, 2005, Board Meeting minutes
- 2-1 Monthly Award for Excellence
- 3-1 PUBLIC HEARING – Proposed Amendment of R.61-63, Radioactive Materials
- 3-2 Sign-in Sheet for Public Hearing
- 3-3 Verbatim Transcript
- 4-1 CONTESTED CASE – Responsible Economic Development vs. SCDHEC and Wal-Mart
- 4-2 Verbatim Transcript
- 5-1 Proposed Amendment of R.61-62, Air Pollution Control Regulations
- 6-1 Consideration for Regulation Revision Withdrawal – Regulation 61-3
- 6-2 Additional Information provided to Board
- 7-1 Administrative Orders, Consent Orders and Sanction Letters issued by Health Regulation
- 8-1 Administrative and Consent Orders issued by EQC
- 9-1 Orders issued by Ocean and Coastal Resource Management
- 10-1 Board Resolution “Access to Small Items”